Supreme Court, U.S.
FILED

99 281 JUN 21 1999

No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

EDWARD P. YOUNG, JR.

Petitioner

versus

MONTGOMERY CITY COUNCIL AND
STATE OF ALABAMA
DON SEIGELMAN, ADMINISTRATOR OF STATE
BILL PRYOR, ADMINISTRATOR OF LAW
FOB JAMES, ADMINISTRATOR OF STATE

Respondents

On Petition For Writ Of Certiorari
United States Court of Appeals for the Eleventh Circuit

# PETITION FOR WRIT OF CERTIORARI

Edward P. Young
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Montgomery, Alabama 36106-2024
(334) 834-4948
Pro Se

## QUESTIONS GENERAL

1. Is this case meritorious; of fundamental and technical issues of the constitutional right and responsibility of law and equity?

2. Were the alleged injuries just, and the dismissal of this action-request, denial of 1st Amendment privilege of presentation of the petitioners views of the injuries?

3. Does the dimissal of "with and without prejudice"; present a quantal of a question of an injury or unconstitutional action having occurred?

4. Has a geographic curtilage been unconstitutionally drawn with a resulting infringement of a constitutional citizen privilege?

5. Equivocally or paradoxically have either or both parties exceeded their rights?

## QUESTIONS-CLAIM

1. Does a filed allegation of the commission of "a tort in deceit" further alleging unconstitutional discriminatory statutes, acts and ordinance, constitute a federal question of life, liberty and property of a United States Citizen?

2. Does dismissal with and without prejudice by the district court, and affirmation by the Appellate Court, confirm by the doctrine of aestoppel that a tort controversy exists?

3. Can an ex post facto bill be surreptitiously p endently legislated, shielded and enforced "under colour of law"?

4. Has an unconstitutional discrimination occurred by a state act enabling a municipality to legislate and enforce a state law, and surreptitiously discriminate a citizens right of diversity?

5. Were these entangled statutes surreptitiously entangled with diverse discriminatory ethics to create conflicts un-re solvable by legislative, executive, and judicial branches of government:

> Illegal to break the law, unethical to discriminate, and illegal to be unethical?

6. Does this case have merit of constitutional rights entangled with civil liberties, to warrant this tribunals deliberatious of claims:

Questions of Sovereignty and Immunity

a) Total
b) Partial
c) No Immunity
d) Quasi

Have the defendants been classified:

a) Legislative,
b) Administrative,
c) Citizen,
d) Sovereign State,
3) Alter egos.

7. Is there a Xth Amendment question?

## CERTIFICATE OF INTERESTED PERSONS

The undersigned Edward P. Young, Jr. certifies that the following persons or entities have an interest in the outcome of this case:

1. Montgomery City Council, an entity, appellee.

2. Norman Gunter Guy, Jr., an attorney representing Montgomery City Council.

3. The State of Alabama, an entity, appellee.

4. Patrick L. Roberts, Office of the Attorney General of the State of Alabama.

5. District Court of the United States for the Middle District of Alabama, Northern Division.

6. United States Court of Appeals for the Eleventh Circuit.

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TABLE OF AUTHORITIES

Alexander v. Polk, D.C. Pa. 1978, 459 F. Supp.883.

Allway Taxi, Inc. v New York (1972, SD NY) 340 F supp 1120.

Associated Students for University of California at Riverside v. Attorney General of U.S., D.C. Cal. 1973, 368 F.Supp. 11.

Atchison v. Nelson, D.C. Wyo. 1978, 460 F.Supp. 1102.

Babbitt v. United Farm Workers Nat. Union, Ariz.. 1979, 99 S.Ct. 2301, 442 U.S. 289, 60 L.Ed.2d 895.

Barrett v. United Hospital, D.C.N.Y. 1974, 376 F. Supp. 791, affirmed 506 F.2d 1395.

Bela Seating Co. v. Advance Transp. Co., D.C.Ill. 1972, 344 F. Supp.844.

Bolden v Mobile (1978, CA5 Ala) 571 F2d 238.

Brad Bennett et. al. v. Michael Spear et. al. No. 95813.

Where plaintiffs in civil rights action alleged that municipal ordinance providing for segregation of races on city buses was violative

of "equal protection of the laws" provision of Fourteenth Amendment of the Constitution, district court had jurisdiction under 28 USCS para 1331 as quoted phrase includes city ordinances as well as state laws. Browder v Gayle (1956, DC Ala) 142 F supp 707, affd 352 US 903, 1 L Ed 2d 114, 77 S Ct 145, reh den 352 US 950, 1 L Ed 2d 245, 77 S Ct 323 and reh den 352 US 955, 1 L Ed 2d 245, 77 S Ct 323.

Burgener v. California Adult Authority, D.C. Cal. 1976, 407 F. Supp. 561.

Bush v. State Industries, Inc., C.A. 6 (Tenn.) 1979, 599 f.2d 780.

Chicarelli v. Plymouth Garden Apartments, D. C. Pa. 1982, 551 F. Supp. 532.

Cohen v. Virginia, Ky.1821, 19 U.S. 274. 6 Wheat. 264, 5 L.Ed. 225.

City of Boerne v. P.F. Flores No. 95-2074.

Cowart v. City of Ocala, Fla., D.C. Fla. 1979, 478 F. Supp. 774.

Crawford-El v. Britton, No. 96-827

Donohoe Const. Co., Inc. v. Maryland-National Capital Park and Planning Commission, D.C. Mc. 1975, 398 F. Supp. 21.

Dr. Martin Luther King, Jr. Movement Inc. v. City of Chicago, D.C.Ill.1977, 435 F.Supp. 1289.

Evans v. Town of Watertown, D.C. Mass. 1976, 417 f. Supp. 908.

Farrington v. Adjutant General of State of Mich., D.C. Mich. 1980, 492 F. Supp. 1362.

Fitts v. McGhee, Ala. 1899, 19 S.Ct. 269, 172 U.S. 516, 43 L.Ed. 535.

Fullerton v. Monongahela Connecting R Co., D.C. Pa. 1965, 242 F. Supp. 622.

Gouge v. Joint School Dist. No. 1, D.C. Wis. 1970, 310 F.supp. 984.

Federal court had jurisdiction of action alleging that a long-standing public threat of condemnation had deprived an owner of propety of a portion of the value of his property without due process or just compensation. Goulevard Realty Corp. v. Providence Redevelopment Agency (1969, DC RI)308 F Supp 224.

Grand River Dam Authority v. Going, D.C.Okl, 1939, 29 F. Supp. 316.

Hans v. Louisiana, La.1890, 10 S.Ct. 504, 134 U.S. 9, 33 L.Ed. 842.

Hofferber v. First Nat. Bank of Guymon, Oklahoma, D.C. Okl, 1977, 437 F. Supp. 788.

Holladay v Roberts (1977, ND Miss) 425 F Supp 61.

Due process and this clause mean that rights of all persons must rest on same rules and be similarly applied in like circumstances and neither state nor its several subdivisions or officials may engage in any discriminatory practices based upon race, color, creed, or national origin or deprive any person, under color of any state law or regulation, of his life, liberty or property without due process of law. James v. West Virginia Bd. of Regents, D.C.W.Va. 1971, 322 F.Supp. 217, affirmed 448 F.2d 785.

Jones v. Gutscheneritter, C.A.8 (Neb.) 1990, 909 F2d 1208.

Jones v State of Mich., D.C. Mich. 1981, 525 F. supp. 636, affirmed 705 F.2d 454.

Kimel v. State of fla. Bd. of Regents 139 F3d 1426.

Marbury V. Madison (1 Cranch 177).

McLaughlin v. Great Lakes Dredge & Dock Co., D.C. Ohio 1980, 495 F. Supp. 857.

Panzarella v. Boyle, D.C.R.I. 1975, 406 F. Supp. 787.

Alabama's statutory cap of $100,000 on damages recoverable against municipality was

not applicable to suit against city and city council members under para. 1983 and Title VII. Patrick v. City of Florala, M.O. Ala. 1992, 793 F. Supp.301.

Pavel v. Pattison, D.C. La. 1938, 24 F. Supp. 915.

Pendrell v. Chatham College, D.C. Pa. 1974, 370 F.Supp. 494.

Player v. State of Ala. Dept. of Pensions and Sec. D.C.Ala 1975, 400 F. Supp. 249, affirmed 536 F.2d 1385.

In an action for a declaratory judgment that a state statute had been superseded by a federal statute, an actual "controversy" existed despite the fact that the petitioner was obeying the allegedly invalid state statute, where the Attorney General of the state had expressed his belief that the state statute was still valid and that a violation thereof would be prosecuted, and such a violation would expose the petitioner to a large fine plus the possibility of imprisonment, and the fact that the petitioner could avoid the criminal sanctions of the state statute by continuing to obey it did not mean it was not entitled to have the issue resolved. Potlatch Forests, Inc.v. Hays (1070, ED Ark) 318 F Supp 1368, affd on other grounds (CA8) 465 F2d 2 BNA FEB Cas, 3 CCH EPD para 8024, adhered to (ED Ark) 4 BNA FEP Cas 112, 3 CCH EPD para 8297 and affd on other

grounds (CA8) 465 F2d 1081, 4 BNA FEP Cas1037, 4 CCH EPD para 7928.
Reagan v. Farmers' Loan, etc., Co., Tex 1894, 14 Sec. 1047, 154 U.S. 362, 38 L.Ed. 1014.

Unfair and discriminatory administration of a aw, neutral on its face, can result in a violation f this clause. Rehbock v. Dixon, D.C.Ill. 978, F. Supp. 1056.

When Congress has delegated to an agency, the authority to make a rule instead of making the rule itself, the resulting administrative rule is an extension of the statute for purposes of this clause; what Congress cannot do directly, it cannot do by delegation. Rodriguez v. U. S. Parole commission, C.A.Ill. 1979, 594 F.2d 170.

Sayre v. U.S. D.C. Ohio 1967, 282 F.Supp. 175.

Silverman v. Barry, 1984, 727 F. 2d 1121, 234 . S. App. D.C. 22.

Timson v. Weiner (1975, SD Ohio) 395 F. Supp 1344.

TM Systems, Inc. v. U.S., D.C. Conn. 1979, 473 F. Supp.481.

McLaughlin v. Great Lakes Dredge & Dock Co., D. C. Ohio 1980, 495 F. Supp. 857.

Although prohibition against ex post facto laws pplies only to legislative action and judicial decisions are not subject to the prohibition, due process requirement that defendatns have fair otice or warning of conduct which may be held to be illegal imposes substantially the same restraint on the courst as the ex post facto and prohibition imposes on Congress and state legislatures. U. S. v. B & H Dist. corp., D.C. Wis. 1974, 375 F. Supp. 136.

U.S. v Fuller, Ariz. 1973, 93 S. Ct. 801, 409 U.S. 488, 35 L. Ed. 2d 16.

United States v. McDermott (1990, Ca 2 NY) 918 F2d

United States v. Price (1950, CA5 Fla) 179 F2d 644).

U. S. Steel Corp. v. Multistate Tax Commission, D.C.N.Y. 1973, 367 F. Supp. 107.

U. S. to Use of Claude C. Wood Co. v. General Ins. Co. of America D.C. Cal.

Virginia Surface Mining & Reclamation Asso. v. Andrus (1980), WD Va) 483 F Supp 425.

Wagner v. World Wide Automobiles Corp., D.C.N.Y. 1961, 201 F. Supp. 22.

Williams v. U. S. (1950 CA5 Fla) 179 F2d 644. 1426.

## PETITION FOR WRIT OF CERTIORARI

Petitioner prays that a writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit.

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## OPINIONS, ORDERS, JUDGMENTS AND MANDATES

An unpublished order of the Eleventh Circuit was filed 4 December 1998 affirming the Lower Courts dismissal of this case with and without prejudice. A subsequent motion to the Appellate Court for rehearing with suggestion was denied 24 March 1999. 29 March 1999 the petitioner made motion requesting Stay of Mandate. The Court of Appeals filed on 6 May 199 an Order: Affirmed, and on 9 April 1999 issued the mandate. (Appendix)

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## JURISDICTION

This request for redress of grievances, by petitioner for Writ of Certiorari encompasses the Constitution of the United States and the Law, Fact, and Equity as appertains a privilege-right of a citizen.

The United States District Court for the Middle District of Alabama ordered 2 September 1999, to be effective 1 January 1998, new Promulgating Rules.

Rule 24.1-Notification of Claim of Unconstitutionality was duly applicable and asserted by the petitioner. 16 January 1998, in response to recommendation of magistrate Judge, a motion of petitioner for amicus curia, thereby notifyied defendants of the alleged unconstitutional act and the alleged claim.

## CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND GUIDELINES

The Constitution of the United States of America (Original Articles)

Constitutional Amendments I, V, VII, X and XIV

18 U.S.C.S.

28 U.S.C.S.

42 U.S.C.S

U. S. Public Law 89-665

State of Alabama Act No. 100 and 142.

State of Alabama Act No. 89-536

Code of Alabama Sec. 11-68-1

City of Montgomery Ordinances No. 10-91, 1991

The Secretary of the Interiors Standards for the treatment of Historic Properties

Guidelines of the Architectural Review Board of he City of Montgomery.

## STATEMENT OF THE CASE

The petitioner responding to quasi-zoning designation of his domicile in an historic district, filed an application with the Architectural Review Board (ARB) of the City of Montgomery, Alabama, 11 February 1997, for application of polyvinyl chloride coated aluminum to the trim and fascia of his residence. He was required by law to stand in open hearing before the ARB 25 February 1997 for quasi-judicial evaluation of the proposal of the application. The meeting was audio tape recorded and minutes were typewritten subsequently. Unrecorded in the written minutes (an inflammatory deceitful) prejudicial statement of a board member - "the material is prohibited", was followed immediately by a motion to deny the proposal. An attempt by the petitioner to negotiate the quasi-judicial decision of denial was made without remediation. Instruction of the ARB and following the pertinent ordinances, the petitioner sought and stood for appeal before the Montgomery City Council (MCC) on 25 February 1997. The minutes of MCC without elaboration affirm denial by failure of a motion "to allow the proposal". The petitioner concluded that his constitutional privileges and liberties had been prohibited by a "tort in deceit" in a quasi-judicial hearing. Subsequently on 6 March 1997, he requested of the Federal District Court a "writ of cease and decist" resulting in the filing of the civil action presented by petitioner to this United States Supreme Court in this petition.

## CONCLUSION

The salient and sapient concepts of the framers of this Nation and Constitutional form of Government, are being tested and a task of this Court to decide that the process of this petition shall be ended or directed by this Court's legally empowered rules and discretion.

## GENERAL ARGUMENTS

1. This petitioner's action has evolved from a controversy of "taking", of real property use, denying liberty to the plaintiff, and involving a federal question of Xth Amendment infringement.

2. The petition is not about the constitutional division of Federal v. States Xth Amendment requirements. It is about a citizens privilege to address a grievance of asserting diversity under the law. There is no overt-covert intent in the filed action to shock the conscience.

3. This petition evolved from a request of redress, and has now become impeded in resolution of a vital prospective question, so that claim may not be remedied by adjudication. The stare decises of this court presents a meritorious civil government answer. Answered, denied, affirmed or any other opinion may relieve or accentuate this question of cognitive dissonance.

## ARGUMENT

1. The alleged injury (claim) and discrimination of this action was priori, a suppression of debate of the controversies in question. The suppression has been repeatedly affirmed in all subsequent appeals, res ipsa loquiture and res ajudicata.

2. The petitioner asserts the doctrine of aestoppel and collateral aestoppel of the defendants attorneys; affirming "no dispute" and "no verbal response", to the question, "is there any dispute of the facts?", asked by a magistrate judge during a scheduling conference.

3. The life, liberty and property of the petitioner was (were) seized by the process of alleged illegal condemnation of property (under colour of law), by denial of a proposal submitted to the Architectural review board of the City of Montgomery, Municipally legislated and enforced, but administratively delegated by a state of Alabama enabling act. The denial of the petitioners rights of use of polyvinyl chloride bonded aluminum sheathing (an alleged prohibited material) to surface the facade of his domicile. A right allowed all citizens not classified by historic district designation, covenant or contract. The discretionary, arbitrary, capricious, irrational, and coercive discrimination by size of municipalities; allowing neighborhood groups to classify (or re-classify) citizen-owners property, by municipal law, in essence by state law. There is no substantial evidence indicating that the government's compelling interest in public welfare or health has occurred from legislation and view-point enforcement

of these laws. Collateral aestoppel is indicative of other state and municipal alter ego status of individual and geo-social actions: classification discrimination.

The petitioner begs of this court his right of freedom of speech to express and stand for substantiation of the facts and entanglement of legislation - administration - enforcement of the federal questions presented in this case.

## SOVEREIGNTY - IMMUNITY ARGUMENT

1. State enabling legislative act has defined by law geo-political privilege to municipalities, geographical groups, alter ego commissions-boards, encouraging the discretion to classify and enforce limitations of property use. The XIth Amendment and federal statutory law and stare decises of this tribunal under Articles III, and subject to Amendments X and XIV, again produce a federal question to this court for prospective remediation.

2. This case is not hypothetical. It merits temporal definition of "what the law is". If this judiciary is of the opinion that there is no legal further adjudication available to this petitioner, then an advisory opinion by this Tribunal, of which branch, Congress or Executive, may constitutionally address this petition for redress of grievance(s).

3. If the controversies in this case fail to meet the criteria of a civil action: injury, reasonable proximate cause of the injury and remediation; or the time is not ripe for adjudication of the alleged unconstitutional statutes and discretionary enforcement-administration under penalty of law, this court has the power to decide.

4. The petitioner asserts that he has been injured by deprivation of both constitutional rights and civil liberties, aided and abetted by alleged defense of sovereignty and immunity.

5. "On the face of it", this injury does not shock the conscience. When statutory view versus individual

view of intent, public and individual controversies in view-points, not of compelling health or welfare dimensions based on traditional visual sense, and with no consideration of the other 6 (six) experiences of persons, it may be too shocking not to consider mootnes, though the facts and law are not hypothetical. The facts and law are Real; Equity is just.

6. The sovereignty - immunity issues defendants and court have alleged-affirmed as a statutory legal right of defendants, have not been allowed scrutiny and debate of the constitutional, statutory and stare decises of this petition. There appears to have occurred incidents of entanglement effecting manifest injustice of U. S. Constitutional rights, privileges and responsibilities.

7. The petitioner begs that this tribunal support Article I (Original) section 8 of Congressional power to promote the "progress of Science and useful Arts. It is equitable that the fruits of science be enjoyed by any and all citizens who choose to participate at their discretion. This case is about individual empirical risk-benefit, by any literal definition of the meaning of the word - *Free*.

APPENDIX

PUBLISHED

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

| | | |
|---|---|---|
| EDWARD F. YOUNG, JR | ) | |
| | ) | |
| Plaintiff, | ) | CIVIL ACTION |
| | ) | NO. 97-T-306-N |
| v. | ) | |
| | ) | |
| MONTGOMERY CITY COUNCIL, | ) | |
| | ) | |
| Defendant. | ) | |

ORDER

Plaintiff having filed an amended complaint indicating that he is alleging that defendant Montgomery City Council condemned his "private property" "without due process and just compensation," and the court having assumed that he is relying on 28 U.S.C.A. para 1331 as the basis for subject-matter jurisdiction, it is ORDERED that his complaint is not dimissed.

DONE, this the 9 day of April, 1997.

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

| | | |
|---|---|---|
| EDWARD F. YOUNG, JR., | ) | |
| | ) | |
| Plaintiff, | ) | CIVIL ACTION |
| | ) | NO. 97-T-306-N |
| v. | ) | |
| | ) | |
| MONTGOMERY CITY COUNCIL, et al., | ) | |
| | ) | |
| Defendants. | ) | |

ORDER

Upon consideration of the recommendation of the United States Magistrate Judge entered on January 5, 1998, and the objections filed by the plaintiff on January 16, 1998; and after an independent review of the file, it is the ORDER, JUDGEMENT, and DECREE of the court:

(1) That plaintiff's objections are overruled;

(2) That the recommendation of the United States Magistrate Judge is adopted;

(3) That the motions to dismiss filed by defendants are granted and that this cause is dismissed without prejudice as to Montgomery City Council and with prejudice as to defendant State of Alabama; and

(4) That costs are taxed against plaintiff, for which execution may issue.

DONE, this the 23 day of January, 1998.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 98-6150

---

EDWARD P. YOUNG, JR.,

Plaintiff-Appellant,

versus

MONTGOMERY CITY COUNCIL,
THE STATE OF ALABAMA,

Defendants-Appellees.

---

On Appeal from the United States District Court for the Middle District of Alabama

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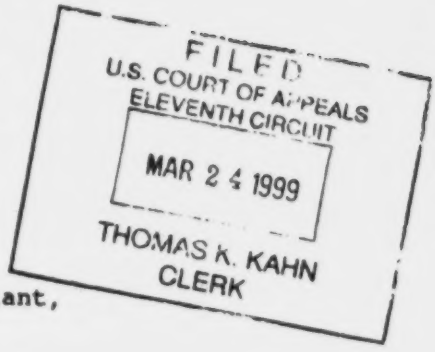
ORDER:

On March 31, 1999, Appellant filed a timely motion to stay the mandate pending his petition for certiorari. On April 9, 1999, the clerk overlooked Appellant's motion and issued the mandate in error. However, even if appellant's motion had been timely

considered, appellant would not be entitled to the relief he requested. appellant has not shown that his certiorari petition would present a substantial question for further appeal or that good cause exists for a stay. See Fed. R. App. P. 41(d). Therefore, Appellant's motion to stay the mandate is DENIED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 98-6150

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EDWARD P. YOUNG, JR.,

Plaintiff-Appellant,

versus

MONTGOMERY CITY COUNCIL,
THE STATE OF ALABAMA,

Defendant-Appellee.

---

On Appeal from the United States District Court for the Middle District of Alabama

---

BEFORE: ANDERSON, COX, and DUBINA, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Appellant, Edward P. Young, Jr., is

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

ORD-41

# United States Court of Appeals

For the Eleventh Circuit

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
DEC 04 1998
THOMAS K. KAHN
CLERK

No. 98-6150
Non-Argument Calendar

District Court No. CV-97-T-306-N

EDWARD P. YOUNG, JR.,

Plaintiff-Appellant,

versus

MONTGOMERY CITY COUNCIL,
THE STATE OF ALABAMA,

Defendants-Appellees.

---

Appeal from the United States District Court
for the Middle District of Alabama

---

Before ANDERSON, COX and DUBINA, Circuit Judges.

J U D G M E N T

This cause came to be heard on the transcript of the record from the United States District Court for the Middle District of Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby **AFFIRMED**;

It is FURTHER ORDERED THAT plaintiff-appellant pay to the defendant-appellee, the costs on appeal to be taxed by the Clerk of Court.

Entered: December 4, 1998
For the Court: Thomas K. Kahn, Clerk

By Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: APR 09 1999